IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2006

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THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

WRIT PETITION No.36374 OF 2003

G. Manickam ... Petitioner

Vs.

1.The Tamil Nadu Administrative Tribunal
by its Registrar, Additional City Civil Court
Building, Chennai-104

2.The State of Tamil Nadu
by Secretary to Government
Finance (Pay Commission) Department,
Chennai-9

3.The Secretary to Government
Higher Education Department,
Fort St. George, Chennai-9

4.The Directorate of Collegiate Education
DPI Compound, College Road,
Chennai-6 ... Respondents

Prayer:- This Writ Petition is filed U/Art 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in OA.No.500/2003 and to quash the order dated 27.6.2003 passed therein and directing the respondents 2 to 4 to re-fix the pensionary benefits of the Petitioner in accordance with GO.MS.No.810 Finance (Pay Commission) Department dated 9.8.1989 and GO.MS.No.8291 Higher Education Department dated 28.5.1997 and to pay the consequential arrears arising out of such fixation.

For Petitioner : Mr.V. Ramasubramanian
For Respondents 2-4 : Mr.E.Sampath Kumar-GA

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ORDER

(Order of the court was made by P.K.MISRA, J.)

Heard the learned counsels appearing for the parties.

2. The impugned order dated 27.6.2003 in O.A.No.500 of 2003 has landed the petitioner in a strange position, which is akin to mythological figure "Thrisanku".

3. The facts giving rise to the present writ petition are as follows :-

The petitioner retired on 31.3.1988 as a selection grade Lecturer in a Government College. After retirement of the petitioner, the State Government had issued G.O.Ms.No.1785, Education Department, dated 5.12.1988, implementing the scale of pay recommended by the University Grants Commission for college teachers with retrospective effect from 1.1.1986. Thereafter, the Government issued orders in G.O.Ms.No.810, Finance Department, dated 9.8.1989, granting certain benefits to the pensioners who had retired before 1.10.1987 as per paragraph 2(ii). In respect of the employees who retired or died on or after 1.10.1987, it was directed in para 2(iii) as follows :-

> " ... (iii) in respect of the employees who retired or died on or after 1st October 1987, their revised pension / family pension shall be the sum total of pension / family pension plus dearness allowance at 608 points of All India Consumer Price Index only, as the present pension/family pension of this category of pensioners / family pensioners has already been stepped up by a quantum equivalent to the dearness pay up to 687 points."

In respect of the persons, who retired after 1.6.1988, certain benefits were recommended as per para-3 of such G.O. Para 6(i) laid down that such orders shall apply to the following categories of pensioners, namely, Government pensioners, teacher pensioners of aided and local body educational institutions and other pensioners of local bodies.

4. Subsequently, however, the Officer on Special Duty, Finance Department of the Government of Tamil Nadu, issued clarification dated 28.3.1990 to the following effect:-

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Points raised	Clarification issued
1) Whether the Government order is applicable to Teachers governed by UGC scales of pay.	The increase in pension ordered in G.O.Ms. No.810,Finance (Pay Commission) Department, dated 9-8-89 is applicable to the Teachers governed by UGC 1-1-1986.
2) What percentage of pension + dearness allowance shall be added to the pension of Teachers governed by UGC Scales of pay and retired prior to 1-1-1986 and after 1-1-86.	i) the pension for those who have retired prior to 1-1-1986 should be fixed taking into account the pension + dearness allowance at 608 points + percentage increase. ii) As the pay of the employees who have retired after 1-1-1986 would have been fixed by merging the Dearness Allowance at 608 points, no percentage and dearness allowance need be added while fixing pension in such cases.
3) Whether the benefit of adding 'dearness pay' in respect of employees retired/retiring on or after 1-6-1988 is applicable to Teachers governed by UGC Scales of pay.	NO.

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4) Whether the minimum Family pension sanctioned with effect from 1-4-1979 (at a flat rate of Rs.100/-p.m., Rs.125/-p.m., from 1-4-1992 Rs.235/- p.m., from 1-10-1984 and Rs.245/- p.m., from 1.4.1988) in accordance with G.O.Ms. No.748, Finance (Pay Commi--ssion) Department, dated 26-5-1979 shall also be revised in accordance with the date of retirement / date of death of Government servant.	Yes. A clari--fication issued in this regard is also enclosed (Government letter No.112174/ PC.I/89, Finance (Pay Commission) Department dated 28.3.90).
5) Whether the benefit of adding 'Dearness pay' along with pay for pensionary benefits in respect of employees retired/ retiring on or after 1-6-1988 is also applicable to death cases arising on or after 1-6-1988.	Yes. But this concession is not applicable to the teachers governed by UGC scales.

5. At that stage, the petitioner along with his colleague filed O.A.No.1750 of 1991 for quashing such clarification and claiming the benefit of G.O.Ms.No.810 dated 9.8.1989. Unfortunately, such Original Application was rejected by order dated 3.1.1997. The main reasoning given by the Tribunal was to the effect that as per para 6, the benefit of G.O.Ms.No.810 dated 9.8.1989 was applicable only to Government pensioners, teacher pensioners of aided and local body educational institutions and other pensioners of local bodies and other categories of pensioners as enumerated in clauses (ii) to (viii) of para 6. However, according to the Tribunal, the applicants, who were teachers in Government college, did not come under any of those categories. The Tribunal had also repelled the contention that the clarification issued was discriminatory as the two sets of employees came under different categories regarding salary structure and benefits thereon.

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6. The petitioner kept quiet at that stage. Subsequently the Government issued G.O.Ms.No.291, Higher Education Department, dated 28.5.1997, which is to the following effect :-

"G.O.Ms.No.291 Dated : 28-5-1997
Read:G.O.Ms.No.810, Finance (Pay Commission) dated 9-8-1989.
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ORDER

In G.O.Ms.No.810, Finance (Pay Commission), dated 9-9-1989, among other things, the Government ordered that pensionary benefits of employees retired/retiring on or after 1st June, 1988 be computed by adding "Dearness Pay" along with pay at the following percentage rates :-

Pay range	Rate of Dearness pay
1) Upto Rs.3,500/-	13% of pay
2) Above Rs.3500/- but not exceeding Rs.6000/-	9% of pay subject to minimum of Rs.455/-.
3) Above Rs.6,000/-	8% of pay subject to minimum of Rs.540/-.

The above orders were not extended to the employees governed by University Grants Commission Scales of pay.

2. The Government examined the question of extending the above benefits to the employees governed by University Grants Commission Scales of Pay and decided to extend the above order to them retrospectively with effect from 1.6.1988, the date on which it has been extended to Government servants.

3. The Government accordingly direct that the pensionary benefits of employees governed by University Grants Commission Scales of Pay in Government/Aided Colleges be computed by adding 'Dearness pay' along with pay at the following rates

Pay range	Rate of Dearness pay
1) Upto Rs.3,500/-	13% of pay
2) Above Rs.3500/- but not exceeding Rs.6000/-	9% of pay subject to minimum of Rs.455/-.
3) Above Rs.6,000/-	8% of pay subject to minimum of Rs.540/-.

4.These orders shall have retrospective effect from 1-6-1988.

5. This order issued with the concurrence of Finance

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Department U.C.No.17802/Pen.1/97-1 dated 16-5-97. ..."

7. In the meantime, another selection grade Lecturer in a Government college, who had retired on 28.2.1987, had filed O.A.No.350 of 1992, claiming that the clarificatory letter dated 28.3.1990 was illegal and the benefits should be given as per G.O.Ms.No.810 dated 9.8.1989. Such matter was decided on 28.8.1998. The Tribunal observed as follows:-

> "2. In G.O.Ms.No.810, Finance (Pay Commission) Department, dated 9-8-89 reads that in respect of existing pensioners who retired before 1-10-1987, the revised pension shall be fixed by including the sum total of basic pension and the related dearness allowance at 608 points with 15% increase. It further reads that these orders shall apply to the Teacher Pensioners and Government Pensioners. Whereas in the impugned communication dated 28-3-90 from the Officer on Special Duty to the Registrar, University of Madras, a clarification has been given stating that the increase in pension ordered in G.O.Ms.No.810, Finance (Pay Commission) Department, dated 9.8.1989 is applicable to the teachers who retired prior to 1-1-1986. In view of this G.O. the applicant has been denied 15% increase mentioned in G.O.Ms.No.810, dated 9-8-89. The impugned communication does not indicate how the increase of 15% was applicable only to the teachers who retired prior to 1-1-1986. We do not find anything in G.O.Ms.No.810 Finance (P.C) Department, dated 9.8.89 to support his claim. Instead, this G.O. categorically states that 15% increase is applicable to those who retired between 1-10-1984 and 30-9-1987. The applicant has retired on 28-2-1987. So, the stand of the respondent that there is no reason to increase the benefits of 15% increase per annum has no basis.
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> 3. In the result, the application is allowed and the impugned order dated 28-3-90 is set aside as far as the applicant is concerned. Respondents are directed to pay the pension of Rs.1,877/- as originally fixed to the applicant and pay him all arrears within a period of four weeks from the date of receipt of a copy of this order."

8. Relying upon the aforesaid subsequent events, namely, the issuance of G.O.Ms.No.291 dated 28.5.1997 and the judgment of the Administrative Tribunal in O.A.No.350 of 1992 dated 28.8.1998, the petitioner along with his colleague submitted a further representation dated 1.3.1989 to the respondents. In such representation, it was highlighted that the college teachers, who retired before 1.10.1987 and those who retired after 1.6.1988, had been benefited and those who had retired after 1.10.1987 but before 1.6.1988 had been left out,

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which was discriminatory. It was stated :

> "... When all others have obtained the benefits of G.O.Ms.No.810, there is no reason to deny the same to a handful of persons who retired between 1.10.87 and 1.6.88".

The petitioner therefore requested to refix the pensionary benefits as per para 2(iii) of G.O.Ms.No.810 dated 9.8.1989. Since there was no response, the petitioner and his colleague filed O.A.No.2927 of 1999 praying for a direction to the Government to dispose of the representation and accordingly the Tribunal passed an order dated 29.4.1999 directing the Government to pass final orders on the representation. However, such representation was rejected by letter dated 14.9.1999, giving rise to filing of O.A.No.500 of 2003. Such Original Application was dismissed by the Tribunal by the following order :-

> "... The application is filed by Thiruvaklargal G. Manickam and Subbiayyan, retired Selection Grade Lecturers, Government Arts College, Coimbatore, praying for revision of pension including DA, ADA etc. These two applicants have also filed O.A.No.1750 of 1991 before this Tribunal praying for the same relief but based on some other G.O. Their claim has been considered and negatived by this Tribunal by its judgment dated 3-1-1997. For the same reasons, this application is also dismissed."

The present writ petition is against the aforesaid order.

9. The main contention raised by the learned counsel for the petitioner is to the effect that only those Government college teachers who had retired after 1.10.1987 and before 1.6.1988 are being deprived of the benefit envisaged under G.O.Ms.No.810 dated 9.8.1989. It has been submitted by him that such G.O.Ms.No.810 dated 9.8.1989 has been made applicable to Government college teachers who retired after 1.6.1988 by G.O.Ms.No.291 dated 28.5.1997 and the benefit of such G.O.Ms.No.810 dated 9.8.1989 has been extended to the Government college teachers who had retired prior to 1.10.1987 by virtue of the order dated 28.8.1998 passed by the Tribunal in O.A.No.350 of 1992 and those who retired after 1.10.1987 and before 1.6.1988 have been left in the lurch. According to the learned counsel for the petitioner this anomalous situation obviously gives rise to arbitrary discrimination so far as those persons are concerned.

10. Learned counsel appearing for the State, on the other hand, has submitted that G.O.Ms.No.291 dated 28.5.1997 is only applicable to those who had retired after 1.6.1988. He has further submitted that G.O.Ms.No.810 dated 9.8.1989 was not applicable to Government college teachers who had the benefit of UGC scales of pay

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with effect from 1.1.1986.

11. We are unable to accept the submission made on behalf of the State Government. As per para 6(i) of G.O.Ms.No.810 dated 9.8.1989, such order is applicable to Government pensioners, teacher pensioners of aided and local body educational institutions and other pensioners of local bodies. It is idle to contend that the expression "Government pensioners" would not include the teachers of Government colleges. If such an interpretation would be accepted, even though the college teachers of aided and local body educational institutions would get the benefit and other Government employees would also get the benefit, only the teachers in Government colleges would be left out. On the face of it, we do not find any warrant in G.O.Ms.No.810 for such an interpretation. As a matter of fact, the Tribunal in its judgment dated 28.8.1998 in O.A.No.350 of 2002 had apparently not accepted such interpretation. Apart from that, the Government itself seems to have realised the anomaly and issued G.O.Ms.No.291, Higher Education Department, dated 28.5.1997. However, at that stage, the Government applied such G.O. only to the Government college teachers who retired after 1.6.1988. It is obvious that a small group of Government college teachers who retired between 1.10.1987 and 31.5.1988 would thus be left out and would not get the benefit, even though the teachers who retired before 1.10.1987 are entitled to such benefit. Since such a narrow interpretation would give rise to a discriminatory treatment, we are inclined to accept the submission made on behalf of the petitioner.

12. Learned counsel appearing for the respondents has also raised the contention that the earlier O.A.No.1750 of 1991 filed by the present writ petitioner has been dismissed by order dated 3.1.1997 and such a question was not liable to be re-agitated. Even though prima facie such a submission appears to be acceptable, in the peculiar facts of this case, we are unable to accept such submission. It has to be remembered that soon after the aforesaid order, the Government themselves issued G.O.Ms.No.291 extending the benefit to the Government college teachers, who had retired after 1.6.1988, and the Tribunal in O.A.No.350 of 1992 by judgment dated 28.8.1998 extended similar benefit to those who had retired before 1.10.1987. In view of these subsequent events, the petitioner had filed subsequent Original Application in O.A.No.500 of 2003. In these changed circumstances, the earlier order cannot be taken to be *res judicata*. On the other hand, the Tribunal could have treated the subsequent Original Application as Review Application in order to overcome any technical difficulty, particularly when the very same Tribunal in O.A.No.350 of 1992 had interpreted G.O.Ms.No.810 dated 9.8.1989 to be applicable to Government College teachers.

13. We may also add that the order in O.A.No.350 of 1992, which has been passed subsequently, has not been challenged by the

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Government and if such interpretation given in O.A.NO.1750 of 1991 is to be upheld, it would give rise to two inconsistent conclusions arising out of the very same G.O. Moreover, since such an interpretation is contrary to the principles enshrined in Article 14 of the Constitution such interpretation is to be avoided.

14. In the present case, the Tribunal has rejected O.A.No.500 of 2003 without giving any specific reason and merely on the ground that earlier O.A.No.1750 of 1991 has been dismissed. In normal course, we would have remanded the matter to the Tribunal for fresh consideration. However, since the Tribunal has become non-functional on account of non-posting of any Presiding Officer for a long period and in fact proposal for abolishing the Tribunal is pending, we are deciding the matter finally.

15. For the aforesaid reasons, we are inclined to allow this Writ Petition and grant the benefits as prayed for in this Writ Petition. Accordingly, this Writ Petition is allowed as prayed for. This order shall be complied with within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

srcm/dpk

To

1.The Registrar, The Tamil Nadu Administrative Tribunal
Additional City Civil Court Building, Chennai-104

2.The Secretary to Government, The State of Tamil Nadu
Finance (Pay Commission) Department, Chennai-9

3.The Secretary to Government
Higher Education Department, Fort St. George, Chennai-9

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4.The Directorate of Collegiate Education
DPI Compound, College Road, Chennai-6

+1cc to Mr.V.Ramasubramanian,Advocate Sr 4480

+1cc to the Govt. Pleader Sr 4510

RL (CO)
km/7.3.

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